



## 95TH GENERAL ASSEMBLY

### State of Illinois

### 2007 and 2008

### SB2187

Introduced 2/14/2008, by Sen. David Koehler

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/155.39  
215 ILCS 5/205  
215 ILCS 152/10  
215 ILCS 152/50

from Ch. 73, par. 817

Amends the Illinois Insurance Code. Deletes a provision providing that no vehicle protection product sold or offered for sale in this State shall be subject to the provisions of the Code. Provides that vehicle protection products, the warrantors of such products, and related vehicle protection product sellers and warranty administrators complying with the provision are not required to comply with and are not subject to any other provision of the Code, except that such parties shall be deemed to be engaged in an insurance business subject to the Insurance Code for purposes of rehabilitation, liquidation, conservation, or dissolution by the Director pursuant to Article XIII of the Code. Amends the Service Contract Act. Provides that service contract providers and related service contract sellers and administrators complying with the Act are not required to comply with and are not subject to any provision of the Insurance Code, except that such parties shall be deemed to be engaged in an insurance business subject to the Code for purposes of rehabilitation, liquidation, conservation, or dissolution by the Director of Insurance pursuant to Article XIII of the Code. Provides that if a service contract provider engages in a pattern or practice of conduct that violates the Act and that the Director reasonably believes threatens to render the service contract provider insolvent or cause irreparable loss or injury to the property or business of any person or company located in this State, the Director may report the case to the Attorney General for proceedings in accordance with Article XIII of the Code. Makes other changes. Effective immediately.

LRB095 19517 KBJ 45825 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 155.39 and 205 as follows:

6 (215 ILCS 5/155.39)

7 Sec. 155.39. Vehicle protection products.

8 (a) As used in this Section:

9 "Administrator" means a third party other than the  
10 warrantor who is designated by the warrantor to be responsible  
11 for the administration of vehicle protection product  
12 warranties.

13 "Incidental costs" means expenses specified in the vehicle  
14 protection product warranty incurred by the warranty holder  
15 related to the failure of the vehicle protection product to  
16 perform as provided in the warranty. Incidental costs may  
17 include, without limitation, insurance policy deductibles,  
18 rental vehicle charges, the difference between the actual value  
19 of the stolen vehicle at the time of theft and the cost of a  
20 replacement vehicle, sales taxes, registration fees,  
21 transaction fees, and mechanical inspection fees.

22 "Vehicle protection product" means a vehicle protection  
23 device, system, or service that is (i) installed on or applied

1 to a vehicle, (ii) is designed to prevent loss or damage to a  
2 vehicle from a specific cause, (iii) includes a written  
3 warranty by a warrantor that provides if the vehicle protection  
4 product fails to prevent loss or damage to a vehicle from a  
5 specific cause, that the warranty holder shall be paid  
6 specified incidental costs by the warrantor as a result of the  
7 failure of the vehicle protection product to perform pursuant  
8 to the terms of the warranty, and (iv) the warrantor's  
9 liability is covered by a warranty reimbursement insurance  
10 policy. The term "vehicle protection product" shall include,  
11 without limitation, alarm systems, body part marking products,  
12 steering locks, window etch products, pedal and ignition locks,  
13 fuel and ignition kill switches, and electronic, radio, and  
14 satellite tracking devices.

15 "Vehicle protection product warrantor" or "warrantor"  
16 means a person who is contractually obligated to the warranty  
17 holder under the terms of the vehicle protection product.  
18 Warrantor does not include an authorized insurer.

19 "Warranty reimbursement insurance policy" means a policy  
20 of insurance issued to the vehicle protection product warrantor  
21 to pay on behalf of the warrantor all covered contractual  
22 obligations incurred by the warrantor under the terms and  
23 conditions of the insured vehicle protection product  
24 warranties sold by the warrantor. The warranty reimbursement  
25 insurance policy shall be issued by an insurer authorized to do  
26 business in this State that has filed its policy form with the

1 Department.

2 (b) ~~No vehicle protection product sold or offered for sale~~  
3 ~~in this State shall be subject to the provisions of this Code.~~

4 Vehicle protection products, the product warrantors of such  
5 products, and related vehicle protection product sellers and  
6 warranty administrators complying with this Section are not  
7 required to comply with and are not subject to any other  
8 provision of this Code, except that such parties shall be  
9 deemed to be engaged in an insurance business subject to this  
10 Code for purposes of rehabilitation, liquidation,  
11 conservation, or dissolution by the Director pursuant to  
12 Article XIII of this Code. The vehicle protection products'  
13 written warranties are to be treated as express warranties and  
14 not insurance.

15 (c) This Section applies to all vehicle protection products  
16 sold or offered for sale prior to, on, or after the effective  
17 date of this amendatory Act of the 93rd General Assembly. The  
18 enactment of this Section does not imply that vehicle  
19 protection products should have been subject to regulation  
20 under this Code prior to the enactment of this Section.

21 (Source: P.A. 95-331, eff. 8-21-07.)

22 (215 ILCS 5/205) (from Ch. 73, par. 817)

23 Sec. 205. Priority of distribution of general assets.

24 (1) The priorities of distribution of general assets from  
25 the company's estate is to be as follows:

1           (a) The costs and expenses of administration,  
2 including the expenses of the Illinois Insurance Guaranty  
3 Fund, the Illinois Life and Health Insurance Guaranty  
4 Association, the Illinois Health Maintenance Organization  
5 Guaranty Association and of any similar organization in any  
6 other state as prescribed in subsection (c) of Section 545.

7           (b) Secured claims, including claims for taxes and  
8 debts due the federal or any state or local government,  
9 that are secured by liens perfected prior to the filing of  
10 the complaint.

11           (c) Claims for wages actually owing to employees for  
12 services rendered within 3 months prior to the date of the  
13 filing of the complaint, not exceeding \$1,000 to each  
14 employee unless there are claims due the federal government  
15 under paragraph (f), then the claims for wages shall have a  
16 priority of distribution immediately following that of  
17 federal claims under paragraph (f) and immediately  
18 preceding claims of general creditors under paragraph (g).

19           (d) Claims by policyholders, beneficiaries, ~~and~~  
20 insureds, and consumers under insurance policies, annuity  
21 contracts, ~~and~~ funding agreements, service contracts,  
22 vehicle protection products, and liability claims against  
23 insureds covered under insurance policies and insurance  
24 contracts issued by the company, and claims of the Illinois  
25 Insurance Guaranty Fund, the Illinois Life and Health  
26 Insurance Guaranty Association, the Illinois Health

1 Maintenance Organization Guaranty Association and any  
2 similar organization in another state as prescribed in  
3 Section 545. For purposes of this Section, "funding  
4 agreement" means an agreement whereby an insurer  
5 authorized to write business under Class 1 of Section 4 of  
6 this Code may accept and accumulate funds and make one or  
7 more payments at future dates in amounts that are not based  
8 upon mortality or morbidity contingencies.

9 (e) Claims by policyholders, beneficiaries, and  
10 insureds, the allowed values of which were determined by  
11 estimation under paragraph (b) of subsection (4) of Section  
12 209.

13 (f) Any other claims due the federal government.

14 (g) All other claims of general creditors not falling  
15 within any other priority under this Section including  
16 claims for taxes and debts due any state or local  
17 government which are not secured claims and claims for  
18 attorneys' fees incurred by the company in contesting its  
19 conservation, rehabilitation, or liquidation.

20 (h) Claims of guaranty fund certificate holders,  
21 guaranty capital shareholders, capital note holders, and  
22 surplus note holders.

23 (i) Proprietary claims of shareholders, members, or  
24 other owners.

25 Every claim under a written agreement, statute, or rule  
26 providing that the assets in a separate account are not

1 chargeable with the liabilities arising out of any other  
2 business of the insurer shall be satisfied out of the funded  
3 assets in the separate account equal to, but not to exceed, the  
4 reserves maintained in the separate account under the separate  
5 account agreement, and to the extent, if any, the claim is not  
6 fully discharged thereby, the remainder of the claim shall be  
7 treated as a priority level (d) claim under paragraph (d) of  
8 this subsection to the extent that reserves have been  
9 established in the insurer's general account pursuant to  
10 statute, rule, or the separate account agreement.

11 For purposes of this provision, "separate account  
12 policies, contracts, or agreements" means any policies,  
13 contracts, or agreements that provide for separate accounts as  
14 contemplated by Section 245.21.

15 To the extent that any assets of an insurer, other than  
16 those assets properly allocated to and maintained in a separate  
17 account, have been used to fund or pay any expenses, taxes, or  
18 policyholder benefits that are attributable to a separate  
19 account policy, contract, or agreement that should have been  
20 paid by a separate account prior to the commencement of  
21 receivership proceedings, then upon the commencement of  
22 receivership proceedings, the separate accounts that benefited  
23 from this payment or funding shall first be used to repay or  
24 reimburse the company's general assets or account for any  
25 unreimbursed net sums due at the commencement of receivership  
26 proceedings prior to the application of the separate account

1 assets to the satisfaction of liabilities or the corresponding  
2 separate account policies, contracts, and agreements.

3 To the extent, if any, reserves or assets maintained in the  
4 separate account are in excess of the amounts needed to satisfy  
5 claims under the separate account contracts, the excess shall  
6 be treated as part of the general assets of the insurer's  
7 estate.

8 (2) Within 120 days after the issuance of an Order of  
9 Liquidation with a finding of insolvency against a domestic  
10 company, the Director shall make application to the court  
11 requesting authority to disburse funds to the Illinois  
12 Insurance Guaranty Fund, the Illinois Life and Health Insurance  
13 Guaranty Association, the Illinois Health Maintenance  
14 Organization Guaranty Association and similar organizations in  
15 other states from time to time out of the company's marshaled  
16 assets as funds become available in amounts equal to  
17 disbursements made by the Illinois Insurance Guaranty Fund, the  
18 Illinois Life and Health Insurance Guaranty Association, the  
19 Illinois Health Maintenance Organization Guaranty Association  
20 and similar organizations in other states for covered claims  
21 obligations on the presentation of evidence that such  
22 disbursements have been made by the Illinois Insurance Guaranty  
23 Fund, the Illinois Life and Health Insurance Guaranty  
24 Association, the Illinois Health Maintenance Organization  
25 Guaranty Association and similar organizations in other  
26 states.

1           The Director shall establish procedures for the ratable  
2 allocation and distribution of disbursements to the Illinois  
3 Insurance Guaranty Fund, the Illinois Life and Health Insurance  
4 Guaranty Association, the Illinois Health Maintenance  
5 Organization Guaranty Association and similar organizations in  
6 other states. In determining the amounts available for  
7 disbursement, the Director shall reserve sufficient assets for  
8 the payment of the expenses of administration described in  
9 paragraph (1)(a) of this Section. All funds available for  
10 disbursement after the establishment of the prescribed reserve  
11 shall be promptly distributed. As a condition to receipt of  
12 funds in reimbursement of covered claims obligations, the  
13 Director shall secure from the Illinois Insurance Guaranty  
14 Fund, the Illinois Life and Health Insurance Guaranty  
15 Association, the Illinois Health Maintenance Organization  
16 Guaranty Association and each similar organization in other  
17 states, an agreement to return to the Director on demand funds  
18 previously received as may be required to pay claims of secured  
19 creditors and claims falling within the priorities established  
20 in paragraphs (a), (b), (c), and (d) of subsection (1) of this  
21 Section in accordance with such priorities.

22           (3) The provisions of this Section are severable under  
23 Section 1.31 of the Statute on Statutes.

24           (Source: P.A. 92-65, eff. 7-12-01; 92-875, eff. 1-3-03.)

25           Section 10. The Service Contract Act is amended by changing

1 Sections 10 and 50 as follows:

2 (215 ILCS 152/10)

3 Sec. 10. Exemptions. Service contract providers and  
4 related service contract sellers and administrators complying  
5 with this Act are not required to comply with and are not  
6 subject to any provision of the Illinois Insurance Code, except  
7 that such parties shall be deemed to be engaged in an insurance  
8 business subject to the Illinois Insurance Code for purposes of  
9 rehabilitation, liquidation, conservation, or dissolution by  
10 the Director pursuant to Article XIII of the Illinois Insurance  
11 Code. A service contract provider who is the manufacturer or a  
12 wholly-owned subsidiary of the manufacturer of the product or  
13 the builder, seller, or lessor of the product that is the  
14 subject of the service contract shall not be subject to Article  
15 XIII of the Illinois Insurance Code and is required to comply  
16 only with Sections 30, 35, 45, and 50 of this Act; except that,  
17 a service contract provider who sells a motor vehicle,  
18 excluding a motorcycle as defined in Section 1-147 of the  
19 Illinois Vehicle Code, or who leases, but is not the  
20 manufacturer of, the motor vehicle, excluding a motorcycle as  
21 defined in Section 1-147 of the Illinois Vehicle Code, that is  
22 the subject of the service contract must comply with this Act  
23 in its entirety. Contracts for the repair and monitoring of  
24 private alarm or private security systems regulated under the  
25 Private Detective, Private Alarm, Private Security,

1 Fingerprint Vendor, and Locksmith Act of 2004 are not required  
2 to comply with this Act and are not subject to any provision of  
3 the Illinois Insurance Code.

4 (Source: P.A. 95-613, eff. 9-11-07.)

5 (215 ILCS 152/50)

6 Sec. 50. Examinations and enforcement provisions.

7 (a) The Director may conduct examinations of service  
8 contract providers, administrators, or other persons to  
9 enforce this Act and protect service contract holders in this  
10 State. Upon request of the Director, a service contract  
11 provider shall make available to the Director all accounts,  
12 books, and records concerning service contracts sold by the  
13 service contract provider that are necessary to enable the  
14 Director to reasonably determine compliance or noncompliance  
15 with this Act.

16 (b) The Director may take action that is necessary or  
17 appropriate to enforce the provisions of this Act and the  
18 Director's rules and orders and to protect service contract  
19 holders in this State. If a service contract provider engages  
20 in a pattern or practice of conduct that violates this Act and  
21 that the Director reasonably believes threatens to render the  
22 service contract provider insolvent or cause irreparable loss  
23 or injury to the property or business of any person or company  
24 located in this State, the Director may (i) issue an order  
25 directed to that service contract provider to cease and desist

1 from engaging in further acts, practices, or transactions that  
2 are causing the conduct; (ii) issue an order prohibiting that  
3 service contract provider from selling or offering for sale  
4 service contracts in violation of this Act; (iii) issue an  
5 order imposing a civil penalty on that service contract  
6 provider; ~~or~~ (iv) report the case to the Attorney General for  
7 proceedings in accordance with Article XIII of the Illinois  
8 Insurance Code; or (v) issue any combination of the foregoing,  
9 as applicable. Prior to the effective date of any Director's  
10 order issued pursuant to this subsection, the Director must  
11 provide written notice of such ~~the~~ order to the service  
12 contract provider and the opportunity for a hearing to be held  
13 within 10 business days after receipt of the notice, except  
14 prior notice and hearing shall not be required if the Director  
15 reasonably believes that the service contract provider has  
16 become, or is about to become, insolvent.

17 A person aggrieved by an Director's order issued under this  
18 Section may request a hearing before the Director. The hearing  
19 request shall be filed with the Director within 20 days after  
20 the date the Director's order is effective, and the Director  
21 must hold such a hearing within 15 days after receipt of the  
22 hearing request.

23 (c) At the hearing, the burden shall be on the Director to  
24 show why the order issued pursuant to this Section is  
25 justified. The provisions of Section 10-25 of the Illinois  
26 Administrative Procedure Act shall apply to a hearing request

1 under this Section.

2 (d) The Director may bring an action in any court of  
3 competent jurisdiction for an injunction or other appropriate  
4 relief to enjoin threatened or existing violations of this Act  
5 or of the Director's orders or rules. An action filed under  
6 this Section also may seek restitution on behalf of persons  
7 aggrieved by a violation of this Act or orders or rules of the  
8 Director.

9 (e) A person who is found to have violated this Act or  
10 orders or rules of the Director may be ordered to pay to the  
11 Director a civil penalty in an amount, determined by the  
12 Director, of not more than \$500 per violation and not more than  
13 \$10,000 in the aggregate for all violations of a similar  
14 nature. For purposes of this Section, violations shall be of a  
15 similar nature if the violation consists of the same or similar  
16 course of conduct, action, or practice, irrespective of the  
17 number of times the conduct, action, or practice that is  
18 determined to be a violation of this Act occurred.

19 (Source: P.A. 90-711, eff. 8-7-98.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.